

REMARKS

Claims 1-24 were pending in the Application. Applicants cancelled claims 5 and 9-24 without prejudice or disclaimer and added claim 25. Hence, claims 1-4, 6-8 and 25 are pending.

Applicants cancelled claims 9-24 so as to prosecute all method claims in one patent application. Applicants are not conceding in this application that cancelled claims 9-24 are not patentable over the art cited by the Examiner. Claims 9-24 were cancelled solely to facilitate expeditious prosecution of the remaining method claims (claims 1-4, 6-8 and 25). Applicants respectfully reserve the right to pursue these (claims 9-24) and other claims in one or more continuation patent applications.

Applicants note that claim 1 was amended to clarify the claimed subject matter and not to overcome prior art. Support for these amendments can be found at least at page 10, line 15 – page 11, line 6 of Applicants' Specification.

Further, claims 4, 6 and 8 were amended to remove the notations of steps (e.g., steps (a), (b) and (c)) to make these claims easier to read and understand.

Hence, claims 1, 4, 6 and 8 were not amended to overcome prior art and no prosecution history estoppel arises from the amendments to claims 1, 4, 6 and 8.

As discussed above, claims 1-4, 6-8 and 25 are pending. Applicants will discuss these pending claims in connection with the Office Action for the above-identified case with a mailing date of February 11, 2008.

In connection with the rejections of claims 1-4 and 6-8, the Office Action rejects claims 1-4 and 6-8 under 35 U.S.C. §112, second paragraph, as being indefinite as the phrase "patron-selectable set of queue order information, the patron-selectable set including the current estimated time remaining and the current position of the patron in the queue" is allegedly unclear. Office Action (2/11/2008), pages 2-3. Similarly, the Office Action rejects claim 4 under 35 U.S.C. §112, second paragraph, as being indefinite as the phrase "a pre-selected notification interval comprises a patron-selected notification criterion" is unclear. *Id.* at page 3. Applicants amended claims 1 and 4 to

remove the language directed to a "patron-selectable set" and "pre-selected notification interval" thereby clarify the claimed subject matter. The scope of claims 1-4, 6-8 and 25 would be clear to a hypothetical person possessing the ordinary level of skill in the pertinent art. According to M.P.E.P. §2171, a claim particularly points out and distinctly defines the metes and bounds of the subject matter if the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art. Hence, claims 1-4, 6-8 and 25 particularly point out and distinctly define the metes and bounds of the subject matter. Consequently, Applicants respectfully assert that claims 1-4, 6-8 and 25 are allowable under 35 U.S.C. §112, second paragraph, and respectfully request the Office Action to withdraw the rejections of claims 1-4, 6-8 and 25 under 35 U.S.C. §112, second paragraph. M.P.E.P. §2171.

In connection with the rejections of claims 1, 4 and 6-8 under 35 U.S.C. §102(b) as being anticipated by Paxton et al. (U.S. Patent Application Publication No. 2002/0007292) (hereinafter "Paxton"), Applicants respectfully traverse these rejections for at least the following reasons.

The Office Action cites paragraphs [0054, 0056, 0059 and 0073] of Paxton as disclosing "the queue order information comprises a patron-selectable set of queue order information, the patron-selectable set including the current estimated time remaining and the current position of the patron in the queue" as recited in claim 1. Office Action (2/11/2008), page 4. Applicants respectfully traverse.

Paxton instead discloses that at a predetermined time estimate, the central processor will send a signal to the patron's receiver to inform the patron that she has a certain amount of time to travel back to the ride location and check-in. [0054]. Paxton further discloses that at a predetermined time interval, the central processor will send a demand to the specific patron indicated at step 46, where the demand is of a Boolean nature where the patron must decide whether or not she is going to make it to the ride. [0056]. Additionally, Paxton discloses that the bilateral communication between the central processor and the patrons' receivers can be accomplished by a variety of transmitter/receiver implementations. [0059]. Furthermore, Paxton discloses that if the

patron receives a signal from the transmitter that she has 20 minutes to attend the attraction and she would like to be placed at a lower priority place-holding on the queue, the patron would make a request at the kiosk for a lower priority place-holding to replace the present higher priority place-holding. [0073].

Hence, Paxton discloses a patron receiver receiving a signal informing the patron that the patron has a certain amount of time to travel back to the ride location and check-in. Further, Paxton discloses sending a demand to a patron where the patron must decide whether or not he/she is going to make it to the ride. Additionally, Paxton discloses that the patron can make a request at a kiosk for a lower priority place-holding.

There is no language in the cited passages that discloses transmitting queue order information to the patron using a preselected communication channel, where the queue order information comprises the current estimated time remaining and the current position of the patron in the queue. Thus, Paxton does not disclose all of the limitations of claim 1, and thus Paxton does not anticipate claim 1. M.P.E.P. §2131.

Further, there is no language in Paxton that discloses "receiving a queue entry request, wherein said queue entry request comprises contact information of a patron, wherein said queue entry request comprises a notification criterion specifying at which point said patron is to be notified" as recited in claim 1. As stated above, Paxton discloses a patron receiver receiving a signal informing the patron that the patron has a certain amount of time to travel back to the ride location and check-in. Further, Paxton discloses sending a demand to a patron where the patron must decide whether or not he/she is going to make it to the ride. There is no language in Paxton that discloses receiving a queue entry request, where the queue entry request comprises a notification criterion specifying at which point the patron is to be notified. Thus, Paxton does not disclose all of the limitations of claim 1, and thus Paxton does not anticipate claim 1. M.P.E.P. §2131.

Claims 4, 6-8 and 25 each recite combinations of features of independent claim 1, and hence claims 4, 6-8 and 25 are not anticipated by Paxton for at least the above-stated reasons that claim 1 is not anticipated by Paxton.

Claims 4, 6-8 and 25 recite additional features, which, in combination with the features of the claims upon which they depend, are not anticipated by Paxton.

For example, Paxton does not disclose "wherein the determining and transmitting steps are repeated at a patron-selected time interval" as recited in claim 4. The Office Action cites paragraph [0054] of Paxton as disclosing the above-cited claim limitation. Office Action (2/11/2008), page 5. Applicants respectfully traverse.

Paxton instead discloses that at a predetermined time interval, the central processor will send a demand to the specific patron indicated at step 46. [0054]. Paxton further discloses that as seen in Figure 2, the demand is of a Boolean nature where the patron must decide whether or not she is going to make it to the ride. [0054]. Additionally, Paxton discloses that if for example, the patron is enjoying her time at the waterpark and cannot possibly get ready in time for the ride she can simply deny the demand and the central processor 50 will then remove her place-holding from the queue 52. [0054]. Furthermore, Paxton discloses that this demand step can be very useful for handling open spots that develop in the queue. [0054].

Hence, Paxton disclose a central processor sending a demand to a specific patron to have the patron decide whether or not he/she is going to make it to the ride.

There is no language in the cited passage that discloses that the determining and transmitting steps are repeated. Neither is there any language in the cited passage that discloses that the determining and transmitting steps are repeated at a patron-selected time interval. Thus, Paxton does not disclose all of the limitations of claim 4, and thus Paxton does not anticipate claim 4. M.P.E.P. §2131.

The Office Action further cites paragraphs [0031 and 0067] of Paxton as disclosing "notifying the patron upon reaching a head of the queue using the communication channel; and in response to the patron failing to respond after an expiry of a predetermined time interval after said previous step, moving the patron to another position within the queue" as recited in claim 6. Office Action (2/11/2008), page 5. Applicants respectfully traverse.

Paxton instead discloses that if the central processor detects that the best travel time exceeds the available time the patron has to get to the ride, the central processor will send a signal to the receiver indicating this dilemma. [0031]. Paxton further discloses that if the patron agrees that they cannot make the ride in time they can accept a higher open place-holding in the queue. [0031]. Furthermore, Paxton discloses that when the patron gets to the ride location he/she will then look at the display of his/her device to find his/her number ID. [0067].

There is no language in the cited passages that discloses notifying the patron upon reaching a head of the queue using the communication channel. Neither is there any language in the cited passages that discloses that in response to the patron failing to respond after an expiry of a predetermined time interval, moving the patron to another position within the queue. Thus, Paxton does not disclose all of the limitations of claim 6, and thus Paxton does not anticipate claim 6. M.P.E.P. §2131.

The Office Action further cites paragraph [0031] of Paxton as disclosing "wherein the another position within the queue is an end of the queue" as recited in claim 7. Office Action (2/11/2008), page 5. Applicants respectfully traverse.

Paxton instead discloses that if the central processor detects that the best travel time exceeds the available time the patron has the get to the ride, the central processor will send a signal to the receiver indicating this dilemma. [0031]. Paxton further discloses that if the patron agrees that they cannot make the ride and time they can accept a higher open place-holding in the queue. [0031].

There is no language in the cited passage that discloses that the another position within the queue is an end of the queue. Thus, Paxton does not disclose all of the limitations of claim 7, and thus Paxton does not anticipate claim 7. M.P.E.P. §2131.

Additionally, the Office Action cites paragraphs [0067 and 0073] of Paxton as disclosing "in response to the patron being at the head of the queue, determining if the patron can be accommodated; and in response to the patron not being accommodated, interchanging the current position of the patron and position of a next patron in the

queue" as recited in claim 8. Office Action (2/11/2008), page 6. Applicants respectfully traverse.

Paxton instead discloses that as seen in Figure 6, the display screen 80c indicates 41,071 in the upper portion and 41,100 in the lower portion. [0067]. Paxton further discloses that this indicates a low value and high-value of a range. [0067]. Paxton additionally discloses that at this point our patron would determine that 41,084 is in between 41,071 and 41,100 and she would then venture to the gate 82c and transmit her device through the device receiving mechanism 84c. [0067]. Furthermore, Paxton discloses that the device receiving mechanism reads the patron's ID and queries this ID with that specific gate's ID range and if the ID is in between the range the patron will be allowed admittance. [0067]. Additionally, Paxton discloses that the user interface system on the kiosk in one form would retrieve lower priority place-holdings that have recently become available and display the proximate wait times for these place-holdings to the patron. [0073].

Hence, Paxton discloses admitting the patron based on if the patron's ID is within a range of IDs associated with a gate. Further, Paxton discloses that if the patron makes a request for a lower priority place-holding, the user interface system on the kiosk would retrieve lower priority place-holdings that have recently become available and display the proximate wait times for these place-holdings to the patron.

There is no language in the cited passages that discloses that in response to the patron being at the head of the queue then determining if the patron can be accommodated. Neither is there any language in the cited passages that discloses that in response to the patron not being accommodated, interchanging the current position of the patron and position of a next patron in the queue. Thus, Paxton does not disclose all of the limitations of claim 8, and thus Paxton does not anticipate claim 8. M.P.E.P. §2131.

Further, Paxton does not disclose "wherein said queue entry request is transmitted by said patron via one of the following: a web page form, and an electronic mail message" as recited in claim 25. Instead, Paxton discloses the amusement park employee would then enter in the visitor's personal information into the central processor in order

to identify the particular receiver with the visitor. [0022]. Thus, Paxton does not disclose all of the limitations of claim 25, and thus Paxton does not anticipate claim 25. M.P.E.P. §2131.

As a result of the foregoing, Applicants respectfully assert that not each and every claim limitation was found within Paxton, and thus claims 1, 4, 6-8 and 25 are not anticipated by Paxton. M.P.E.P. §2131.

Further, in connection with the rejection of claim 2 under 35 U.S.C. §103(a) as being unpatentable over Paxton in view of Thangavelu (U.S. Patent No. 4,838,384), Applicants respectfully traverse these rejections for at least the following reasons.

The Office Action cites column 13, lines 25-29 of Thangavelu as teaching "wherein the set of historical data comprises a queue servicing rate for a preceding time interval, the estimated time remaining determined using a linear extrapolation with said queue servicing rate" as recited in claim 2. Office Action (2/11/2008), page 7. Applicants respectfully traverse.

Thangavelu instead teaches that the average passenger arrival rate for three minutes is computed knowing the arrival rate for one three-minute interval and the arrival rate for the next three-minute interval, using appropriate linear interpolation or extrapolation. Column 13, lines 25-29.

There is no language in the cited passage that teaches or suggests that the set of historical data comprises a queue servicing rate for a preceding time interval, the estimated time remaining determined using a linear extrapolation with the queue servicing rate. Instead, Thangavelu teaches estimating the passenger arrival rate. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 2, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore,

an Examiner may often find every element of a claimed invention in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). The Examiner must provide articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited approvingly in *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007)).

As understood by Applicants, the Office Action admits that Paxton does not teach "wherein the set of historical data comprises a queue servicing rate for a preceding time interval, the estimated time remaining determined using a linear extrapolation with said queue servicing rate" as recited in claim 2. Office Action (2/11/2008), page 6. The Office Action asserts that Thangavelu teaches the above-cited missing claim limitations. *Id.* at page 7. The Office Action's reasoning for modifying Paxton with Thangavelu to include the above-cited claim limitations is "to estimate the average arrival passenger rate, as taught in Thangavelu Col. 13 lines 25-29." *Id.* The Office Action's reasoning is insufficient to establish a *prima facie* case of obviousness in rejecting claim 2.

As stated above, the Office Action cites column 13, lines 25-29 of Thangavelu as support for the Office Action's reasoning for modifying Paxton with Thangavelu to include the missing claim limitations of claim 2. Thangavelu teaches that the average passenger arrival rate for three minutes is computed knowing the arrival rate for one three-minute interval and the arrival rate for the next three-minute interval, using appropriate linear interpolation or extrapolation. Column 13, lines 25-29. There is no language in Thangavelu (and in particular column 13, lines 25-29) that makes any suggestion to have the set of historical data comprise a queue servicing rate for a preceding time interval, where the estimated time remaining is determined using a linear extrapolation with the queue servicing rate (missing claim limitations of claim 2 that are



not taught by Paxton) in order to compute the average passenger arrival rate. The Office Action has cited to an arbitrary passage in Thangavelu that teaches computing an average passenger arrival rate. The Office Action has to provide some rational connection between the cited passage that is the source of the Office Action's reasoning and the missing claim limitations. The Office Action's source of reasoning (column 13, lines 25-29 of Thangavelu) does not provide reasons as to why one skilled in the art would modify Paxton to include the missing claim limitations of claim 2. Accordingly, the Office Action has not presented a *prima facie* case of obviousness for rejecting claim 2. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007).

Further, the Office Action's reasoning ("to estimate the average arrival passenger rate") does not provide reasons, as discussed further below, that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Paxton to include the above-indicated missing claim limitations of claim 2. Accordingly, the Office Action has not presented a *prima facie* case of obviousness for rejecting claim 2. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007); *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Paxton addresses the problem of substantially removing lines for attractions. [0005-0009]. The Office Action has not provided any reasons as to why one skilled in the art would modify Paxton (which teaches substantially removing lines for attractions) to have the set of historical data comprise a queue servicing rate for a preceding time interval, where the estimated time remaining is determined using a linear extrapolation with the queue servicing rate (missing claim limitations of claim 2 that is not taught by Paxton). The Office Action's rationale ("to estimate the average arrival passenger rate") does not provide such reasoning.

There is no logical connection between estimating the average arrival passenger rate (Office Action's reasoning) and estimating the time remaining using a linear extrapolation with the queue servicing rate (missing claim limitation of claim 2 that is not taught by Paxton). Hence, the Office Action's rationale does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no

knowledge of the claimed invention, would modify Paxton to include the missing claim limitations of claim 2. Accordingly, the Office Action has not presented a *prima facie* case of obviousness for rejecting claim 2. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007); *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Further, in connection with the rejection of claim 3 under 35 U.S.C. §103(a) as being unpatentable over Paxton in view of Holland et al. (U.S. Patent Application Publication No. 2002/0143605) (hereinafter "Holland"), Applicants respectfully traverse these rejections for at least the following reasons.

The Office Action cites paragraph [0024] of Paxton as teaching "wherein the queue servicing rate comprises a rate at which patrons have been served between a current time and a preceding notification time" and cites paragraph [0007] of Holland as teaching "wherein the set of historical data further comprises seasonal average patron service rates" as recited in claim 3. Office Action (2/11/2008), page 7. Applicants respectfully traverse.

Paxton instead teaches that, because the visitor has a virtual placeholder in the queue at the time of her request, she has the 1001 spot which of course counts down (10 per two minutes in our example) as other visitors that have high priority placeholders ahead of our visitor's placeholder go through the ride. [0024]. Paxton further teaches that during this interim time our visitor can look at other portions of the park or even go on less crowded rides that have a lower wait time. [0024].

There is no language in the cited passage that teaches or suggests that the queue servicing rate comprises a rate at which patrons have been served between a current time and a preceding notification time.

Further, Holland teaches that the member may desire to track the customer demand for a product on a product-by-product basis, a market-by-market basis, a seasonal basis, etc. [0007].

There is no language in the cited passage that teaches or suggests that the set of historical data further comprises seasonal average patron service rates. Instead, Holland teaches tracking the customer demand for a product on a seasonal basis.

As a result of the foregoing, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 3, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

As stated above, most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). The Examiner must provide articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited approvingly in *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007)).

The Office Action admits that Paxton does not teach "wherein the set of historical data further comprises seasonal average patron service rates" as recited in claim 3. Office Action (2/11/2008), page 7. The Office Action asserts that Holland teaches the above-cited missing claim limitation. *Id.* The Office Action's reasoning for modifying Paxton with Holland to include the above-cited claim limitation is "to track service demand on a seasonal basis, as taught in Holland para. 7." *Id.* The Office Action's

reasoning is insufficient to establish a *prima facie* case of obviousness in rejecting claim 3.

As stated above, the Office Action cites paragraph [0007] of Holland as support for the Office Action's reasoning for modifying Paxton with Holland to include the missing claim limitation of claim 3. Holland teaches that the member may desire to track the customer demand for a product on a product-by-product basis, a market-by-market basis, a seasonal basis, etc. [0007]. There is no language in Holland (and in particular paragraph [0007]) that makes any suggestion to have the set of historical data further comprise seasonal average patron service rates (missing claim limitation of claim 3 that is not taught by Paxton) in order to track customer demand for a product on a seasonal basis. Further, there is no language in paragraph [0007] that focuses on tracking service demand as suggested by the Office Action. Instead, paragraph [0007] of Holland teaches tracking customer's demand for a given product. The Office Action has to provide some rational connection between the cited passage that is the source of the Office Action's reasoning and the missing claim limitation. The Office Action's source of reasoning (paragraph [0007] of Holland) does not provide reasons as to why one skilled in the art would modify Paxton to include the missing claim limitation of claim 3. Accordingly, the Office Action has not presented a *prima facie* case of obviousness for rejecting claim 3. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007).

CONCLUSION

As a result of the foregoing, it is asserted by Applicants that claims 1-4, 6-8 and 25 in the Application are in condition for allowance, and respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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